

During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW., Washington, DC 20415 (202) 606-1500.

Dated: September 2, 2003.

Mary M. Rose, Chairperson, Federal Prevailing Rate Advisory Committee.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48454; File No. SR-CHX-2003-12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Automatic Execution of Partial Orders

September 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 1, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange

Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 5, 2003, the Exchange amended the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain provisions of CHX Article XX, Rule 37 (Guaranteed Execution System and Midwest Automated Execution System), which governs, among other things, automatic execution of market and marketable limit orders. Specifically, the CHX seeks to add an Interpretation and Policy providing that a CHX specialist may elect to activate the "auto-partials" functionality on a voluntary basis, at any point during the regular trading session. Proposed Interpretation and Policy .11 constitutes the Exchange's stated existing policy, practice and interpretation with respect to the auto-partial provisions of CHX Article XX, Rule 37(b).

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in [brackets].

\* \* \* \* \*

RULE 37

(b) Automated Executions. The Exchange's Midwest Automated Execution System (the MAX System) may be used to provide an automated delivery and execution facility for orders that are eligible for automatic execution on the Exchange.

\* \* \* \* \*

(6) Execution of Dual Trading System Issues.

(A) A MAX market or marketable limit agency order that is of a size less than or equal to the auto-execution threshold shall be automatically filled at the ITS BBO price up to the size of the auto-execution threshold. If the size of the incoming order is greater than the auto-execution threshold, the order shall be designated as an open order; provided, however, that if an order

<sup>3</sup> See Letter from Kathleen Boege, Associate General Counsel, CHX, to Ms. Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 5, 2003 ("Amendment No. 1"). In Amendment No. 1, the CHX corrected a minor typographical error in their rule text and noted that its MAX automatic execution system provides electronic notice to order-sending firms when Exchange specialists modify their automatic execution parameters.

sending firm has notified the specialist, in a manner approved by the Exchange, that the order sending firm elects to have such orders filled up to the size of the auto-execution threshold and if the specialist has engaged the auto-partial functionality as described in Interpretation and Policy .11, the order shall automatically be filled up to the size of the auto-execution threshold and the portion of the order that exceeds the auto-execution threshold shall be designated as an open order. If the size of the order is greater than the auto-acceptance threshold, the order shall be designated as an open order; provided, however, that the specialists may cancel the order within one minute of its being entered into MAX.

\* \* \* \* \*

(7) Execution of NASDAQ/NM Securities.

(A) In NASDAQ/NM Securities, if the specialist is quoting at the NBBO price at the time a MAX market or marketable limit order is received, an order that is less than or equal to the auto-execution threshold shall automatically be filled at such NBBO price up to the size of the auto-execution threshold (or the specialist's bid or offer if greater than the auto execution threshold). If the order is of a size greater than the auto-execution threshold, the order shall automatically be filled up to the size of the specialist's bid or offer (as the case may be) and the portion of the order that exceeds the specialist's bid or offer shall be designated as an open order.

\* \* \* \* \*

(B) If the specialist is not quoting at the NBBO at the time a MAX market or marketable limit agency order is received, an order that is less than or equal to the auto-execution threshold shall be automatically filled at the NBBO up to the size of the auto-execution threshold if the specialist has not, within 20 seconds (or a lesser time increment designated by the specialist) after receipt of the order, complied with the manual execution requirement of Rule [43(d)] 37(a) of this Article. If the size of the incoming order is greater than the auto-execution threshold, the order shall be designated as an open order; provided, however, that if an order sending firm has notified the specialist, in a manner approved by the Exchange, that the order sending firm elects to have such orders filled up to the size of the auto-execution threshold and if the specialist has engaged the auto-partial functionality as described in Interpretation and Policy .11, the order shall automatically be filled up to the size of the auto-execution threshold and the portion of the order that exceed

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

the auto-execution threshold shall be designated as an open order. If the size of the incoming order is greater than the auto-acceptance threshold, the order shall be designated as an open order; provided, however, that the specialist may cancel the order within one minute of its being entered into MAX.

\* \* \* \* \*  
 Interpretations and Policies:  
 \* \* \* \* \*

.11 *The partial automatic execution algorithms referenced in Rule 37(b) constitute voluntary MAX enhancements that may be enabled by a CHX specialist on an issue-by-issue basis. The CHX specialist may elect to enable or disable these enhancements during any portion of the Primary Trading Session.*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The proposed rule change would amend certain provisions of CHX Article XX, Rule 37, which governs, among other things, automatic execution of partial market and marketable limit orders. Specifically, the CHX seeks to add an Interpretation and Policy providing that a CHX specialist may elect to activate the auto-partials functionality on a voluntary basis, at any point during the regular trading session. Proposed Interpretation and Policy .11 constitutes the Exchange's stated existing policy, practice and interpretation with respect to the auto-partial provisions of CHX Article XX, Rule 37(b).

The Exchange's Midwest Automatic Execution System ("MAX") provides for automatic execution of eligible market and marketable limit orders, in accordance with the provisions of CHX Article XX, Rule 37(b), which governs automatic execution of such orders. The Commission previously has approved

changes to CHX Article XX, Rule 37(b) that permit automatic execution of partial orders, if an order-sending firm has affirmatively elected to permit such partial executions.<sup>4</sup> The technological enhancement to the Exchange's MAX system, that effects automatic execution of partial orders, is referred to as the "auto-partials" functionality.

According to the Exchange, throughout the development and implementation of the auto-partials functionality, the Exchange's staff and members have consistently treated the auto-partials functionality as a voluntary systems enhancement that could be enabled at the discretion of the CHX specialist.<sup>5</sup> The proposed rule change clarifies the consistent interpretation of those provisions of CHX Article XX, Rule 37(b) that contemplate the auto-partials enhancement.

In the case of stocks with low trading volume, for example, a CHX specialist who received a large order for that issue might not be able to secure sufficient liquidity in another market to fill the order for his customer. In such case, if the CHX specialist has offered auto-partial execution, a portion of the order would be executed automatically but the remaining portion would be subject to manual execution at the best price the CHX specialist could obtain as agent for the balance of the order. If the CHX specialist had not offered auto-partials, the customer would quickly discern that it had not received an automatic execution and would then have the option to cancel the order and seek execution of the entire order in another market center.

The CHX believes that another instance in which a CHX specialist might elect to disengage the auto-partials algorithm is immediately prior to the close of the regular trading session. In the case of a large order received immediately prior to the close that received an auto-partial execution, most customers would request (and for business reasons most CHX specialists would give) execution of the balance of the order at the auto-partial execution

<sup>4</sup> See Securities Exchange Act Release No. 44778 (September 7, 2001), 66 FR 48074 (September 17, 2001) (SR-CHX-2001-11), Securities Exchange Act Release No. 46321 (August 7, 2002), 67 FR 53369 (August 15, 2002) (CHX 2001-32).

<sup>5</sup> Even if a CHX specialist elects to enable the auto-partials functionality, partial orders will not be executed unless an order-sending firm has affirmatively indicated its election to have orders executed on a partial basis. Thus, despite the CHX specialist's discretion to enable the auto-partials functionality, CHX order-sending firms still maintain the discretion to forego partial executions if their preferences and/or business model dictate that they receive fills of entire orders.

price. The CHX specialist, perhaps lacking the liquidity to fill the entire order out of his inventory, would be without recourse to obtain liquidity in another market center, and would be left with a significant position overnight, potentially subjecting the CHX specialist to extreme and unwarranted exposure at the open the following morning.

The CHX believes that the proposed rule change, which reflects existing pattern and practice with respect to the auto-partials functionality, represents a reasonable balance between the various business models of CHX specialists, and permits specialists to offer a customer enhancement without prejudicing other specialists whose circumstances dictate that they forego engagement of the auto-partials functionality.

#### 2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>6</sup> The CHX believes the proposal is consistent with Section 6(b)(5) of the Act<sup>7</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

(ii) as to which the CHX consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR-CHX-2003-12 and should be submitted by October 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48460; File Nos. SR-NASD-2002-162; SR-NYSE-2002-36]

#### Self-Regulatory Organizations; Notice of Extension of Comment Period for the Amendments to Proposed Rule Changes by the National Association of Securities Dealers, Inc. and New York Stock Exchange, Inc. Relating to Supervisory Control Amendments

September 8, 2003.

On August 16, 2002, the New York Stock Exchange ("NYSE" or "Exchange"), and on November 4, 2002, the National Association of Securities Dealers, Inc. ("NASD"), filed with the

Securities and Exchange Commission ("SEC" or "Commission") proposed rule changes pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> regarding the supervisory and supervisory control procedures of member firms. A complete description of the proposed rule changes is found in the notices of filing, which were published in the **Federal Register** on November 27, 2002.<sup>3</sup> On April 28, 2003, the NYSE submitted Amendment No. 2 to the proposed rule change, and on August 7, 2003, the NYSE filed Amendment No. 3 to the proposed rule change. On August 5, 2003, the NASD filed Amendment No. 1 to the proposed rule change, and on August 7, 2003, the NASD filed Amendment No. 2 to the proposed rule change. A complete description of these amendments is found in the notices thereof, which were published in the **Federal Register** on August 13, 2003.<sup>4</sup>

To give the public additional time to comment on the amendments to the proposed rule changes, the Commission has decided to extend the comment periods pursuant to section 19(b)(2) of the Act.<sup>5</sup> Accordingly the comment periods shall be extended until October 3, 2003.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release Nos. 46858 (November 20, 2002), 67 FR 70994 (SR-NYSE-2002-36) and 46859 (November 20, 2002), 67 FR 70990 (SR-NASD-2002-162); see also Securities Exchange Act Release No. 46858A (November 27, 2002), 67 FR 72261 (SR-NYSE-2002-36 Correction).

<sup>4</sup> See Securities Exchange Act Release Nos. 48298 (August 7, 2003), 68 FR 48421 (SR-NASD-2002-162) and 48299 (August 7, 2003), 68 FR 48431 (SR-NYSE-2002-36).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

the principal office of the NASD or NYSE. All submissions should refer to File No. SR-NASD-2002-162 or SR-NYSE-2002-36 and should be submitted by October 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48459; File No. SR-Phlx-2003-61]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Equity and Index Option Fees

September 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on August 29, 2003, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend its schedule of dues, fees, and charges to adopt the following equity option and index option fees: (1) A cap of \$50,000 per member organization on all "firm-related" equity option and index option comparison and transaction charges combined; (2) a license fee of \$0.10 per contract side for Firm/Proprietary and Firm/Proprietary Facilitation transactions in the Nasdaq-100 Index Tracking Stock ("QQQ")<sup>SM3</sup> equity

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Nasdaq-100<sup>®</sup>, Nasdaq-100 Index<sup>®</sup>, Nasdaq<sup>®</sup>, The Nasdaq Stock Market<sup>®</sup>, Nasdaq-100 Shares<sup>SM</sup>, Nasdaq-100 Trust<sup>SM</sup>, Nasdaq-100 Index Tracking Stock<sup>SM</sup>, and QQQ<sup>SM</sup> are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index<sup>®</sup> (the "Index") is determined, composed, and calculated by Nasdaq

<sup>8</sup> 17 CFR 200.30-3(a)(12).